

November 20, 2013

**When filing for a ‘child’, age matters**

**Question:** “My U.S. citizen husband is filing an immigrant petition for me. We got married after my daughter (who is not his biological child) turned eighteen. Can he file a petition for her? If not, how can she migrate to the U.S.?”

Under U.S. Immigration Law, your husband is not allowed to file a petition for your daughter if your marriage took place after she turned eighteen years old. At that age she is no longer considered a “step-child” of your U.S. citizen husband, under U.S. law. If you have other children who were under eighteen years old when the marriage to your U.S. citizen husband took place, they would be considered the stepchildren of your husband, and he would be able to file separate petitions for them under an immediate relative category: “Minor Child or Stepchild of a U.S. Citizen.”

If your immigrant petition is approved, you will be able to immigrate to the U.S. and become a Legal Permanent Resident (LPR). Once you receive this LPR status, you will be able to file a petition for your daughter yourself. If you are able to file for her before she turns twenty-one years old, she will still be considered a “child” under U.S. Immigration Law, and her preference date will be much sooner. Additionally, she must also remain unmarried to qualify under the “Minor Child of a Legal Permanent Resident” category. If you wait until after she turns twenty-one years of age (and she remains unmarried), she will fall under the “Unmarried Son or Daughter of an LPR” category of U.S. Immigration Law. You are still able to file a petition for her, but the waiting time becomes longer with this category.

For more information on immigrant visas, including all categories of visas and the application process, please visit our website at [http://kingston.usembassy.gov/immigrant\\_visas.html](http://kingston.usembassy.gov/immigrant_visas.html)